

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
MAR 11 2008
CLERK

UNITED STATES OF AMERICA,

CR 04-30070

Plaintiff,

ORDER AND OPINION ON
MOTION TO VACATE

-vs-

ROY B. ONE STAR,

Defendant.

Defendant was convicted, following a trial by jury, of six counts of aggravated sexual abuse of a child and one count of simple assault. He was sentenced on April 11, 2005, to life imprisonment. He appealed his conviction and sentence to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit affirmed his conviction and sentence on October 12, 2006. The mandate was filed in the District Court on November 24, 2006. The time for filing a petition for a writ of certiorari to the United States Supreme Court expired February 22, 2007, Sup. Ct. R. 13.1, and the conviction thus became final on that date. Clay v. United States, 537 U.S. 522, 525, 123 S.Ct. 1072, 1074, 155 L.Ed.2d 88 (2003) ("For the purpose of starting the clock on § 2255's one-year limitation period, we hold, a judgment of conviction becomes final when the time expires for filing a petition for certiorari contesting the appellate court's affirmation of the conviction"). Defendant filed his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 on January 23, 2008. His motion is timely.

Defendant contends that (1) trial counsel was ineffective because he knew that the defendant was mentally incompetent (defendant contends that he is currently incarcerated in the mental health unit at F.C.I. Butner), (2) trial counsel was ineffective because he prevented defendant from testifying at trial, and (3) trial counsel was ineffective "in not forcing [defendant] and advising [defendant] in writing" as to the acceptance of a "10 year plea offer."

The Court has conducted its preliminary consideration as required by Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts. Based upon the foregoing,

IT IS ORDERED that, pursuant to Rule 4 of the Rules Governing § 2255 Proceedings, the United States Attorney in and for the District of South Dakota shall serve and file an answer or responsive pleading, together with a legal brief or memorandum in support thereof, that complies with Rule 5 of the Rules Governing § 2255 Proceedings on or before April 30, 2008. Any responsive brief shall be filed within 30 days of the service of the government's brief.

Dated this 3rd day of March, 2008.

BY THE COURT:


CHARLES B. KORNMANN
U.S. District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY
(SEAL)